

INDIANA PUBLIC DEFENDER COMMISSION MEETING MINUTES

March 10, 2004

The meeting commenced at approximately 3:10 p.m. Present were: Chairman Norman Lefstein, Commission members Bettye Lou Jerrel, Sen. Timothy Lanane, Susan Carpenter, and Rebecca McClure. Sen. Richard Bray joined the meeting at approximately 3:15 p.m. Also in attendance were Larry Landis of the Indiana Public Defender Council; Neal Bowling, attorney for the Commission; David Cook and Peter Haughan, of the Marion County Public Defender Agency; Amy Hutcheson, Chief Public Defender of Tippecanoe County; and Patrick Harrington and Kent Moore of the Tippecanoe County Public Defender Board.

1. Minutes from the December 11, 2003, meeting were reviewed and approved.
2. Chairman Lefstein noted that the Indiana General Assembly had recently increased funding for the Indiana Public Defense Fund from \$7,000,000 annually to \$8,000,000, beginning July 1, 2004, and increasing to \$9,000,000 annually on July 1, 2005. It was also noted that Neal Bowling, the current staff attorney for the Commission, would be leaving within the month, and that a search was being conducted for a suitable replacement.
3. Given the presence of representatives of the Marion County Public Defender Agency and the Tippecanoe County public defender system, Chairman Lefstein proposed that the Commission deviate from the schedule prescribed by the meeting agenda, and instead immediately address the issues for which the Marion and Tippecanoe County officials had appeared. All Commissioners concurred in Chairman Lefstein's suggestion.
4. By way of introduction, Chairman Lefstein discussed a letter from Patricia Puritz of the American Bar Association describing the appalling state of indigent juvenile defense in Marion County. The letter had been reviewed by all Commission members, as well as Chief Public Defender David Cook, who had in turn shared the letter with the Marion County Public Defender Board. It was noted that Mr. Cook had drafted a letter to the members of the Commission describing his plan for addressing the problems with public defense in Marion County Juvenile Court. Part of this plan involved presenting an ordinance to the Marion County Public Safety Committee that would provide funding necessary to bring the Marion County Public Defender Agency's juvenile division into compliance with Commission standards. Another aspect of Mr. Cook's plan involves informing the Executive Committee of the Marion Superior Court that, if the Agency is not adequately funded, the Agency will be compelled to refuse to accept any new appointments.

Next, Mr. Cook stated that he believed that the Commission's current caseload standards for juvenile cases were inappropriate and based upon outdated assumptions. He further asked that the Commission consider amending juvenile caseload standards to better reflect the attorney time requirements of each type of juvenile case. Larry Landis pointed out that the Indiana Chief Defenders Association has recommended that the attorney caseload standards

be changed as well; the recommendations of the Chief Defenders Association comported with Mr. Cook's recommendations. The Commission approved the proposed amendments to the caseload guidelines. The old and new guidelines are as follows:

INADEQUATE SUPPORT STAFF				
JUVENILE CASE TYPES:	OLD STANDARD		NEW STANDARD	
	F/T	P/T	F/T	P/T
JD-C Felony and above	200	100	200	100
JD-D Felony	200	100	250	125
JD-Misd.	200	100	300	150
JS-Juvenile Status	300	150	400	200
JC-Juvenile CHINS	300	150	100	50
JT-TPR	300	150	100	50
Probation violation	300	150	400	200
JM-Juvenile Miscellaneous	300	150	400	200

Chairman Lefstein noted that the Commission would also need to promulgate caseload standards for counties that provided adequate support staff.

Mr. Cook further stated that presently he would be seeking more than \$800,000 from the Marion County Council with which to hire enough attorneys to achieve compliance with the Commission's juvenile caseload standards.

- Tippecanoe County's proposed comprehensive plan was considered. The Commission asked for clarification of the phase-in provision of the proposed plan. Ms. Hutcheson clarified the proposed phase-in, and stated that she expects Tippecanoe County to be in full compliance with Commission standards by 2008, which would be the fifth year of the phase-in project. Mr. Harrington and Mr. Moore stated that all three components of Tippecanoe's county government were highly supportive of the efforts of the Tippecanoe County Public Defender Board to achieve compliance. Larry Landis noted that this state of affairs is quite an improvement from only five years ago, when county government was at best lukewarm toward the idea of spending the necessary funds to achieve compliance. Based upon this discussion, the Commission voted to approve Tippecanoe County's comprehensive plan. See attached Appendix A, the portion of the Tippecanoe County plan describing the proposed phase-in.
- Commissioner McClure departed at 4:20 p.m. At that point, only five Commissioners remained at the meeting.
- The Commissioners who were present then considered and approved capital reimbursements as follows:

COUNTY	DEFENDANT		TOTAL
Delaware	Verner		\$15,867.66
Lake	Azania		\$31,068.37
	Britt		\$3,619.00

Marion	Barker		5,827.50
	Covington		\$10,757.18
	Davis (Bomani)		\$1,644.75
	Ritchie		\$1,615.50
Morgan	Pruitt		\$92,589.92
Spencer	Ward		\$6,091.93
Vanderburgh	McManus		\$135.00
TOTAL			\$169,216.81

8. The Commission then addressed the late claims in the Pruitt case from Morgan County, and the letter from Morgan County Auditor Mae Cooper. Given that the attorney invoices were filed ex parte, that the court orders granting the payment of attorney fees were sealed by the court, and that the personnel in the Morgan County Auditor's office had no prior experience in seeking reimbursement in death penalty cases, the Commission voted to pay in full the \$110,838.13 in late claims in the case.

With respect to death penalty cases in which the trial court dismisses a death penalty count, and the State pursues interlocutory appeal of the trial court's involuntary dismissal, the Commission resolved that it will reimburse counties at 50% for the cost of defending against the State's interlocutory appeal.

9. The Commission approved reimbursement for noncapital claims in the following amounts:

Recommendations for Reimbursement in Non-capital Cases--March 10, 2004					
COUNTY	PERIOD COVERED	TOTAL EXPENSE	ADJUS'T	ADJUS'D EXPEND.	40% REIMB.
ADAMS	10/01/03-12/31/03	\$39,968.40	-\$883.54	\$40,851.94	\$16,340.78
ALLEN	10/01/03-12/31/03	\$591,533.47	\$0.00	\$591,533.47	\$236,613.39
BENTON	10/01/03-12/31/03	\$22,851.96	\$1,151.80	\$21,700.16	\$8,680.06
BLACKFORD	10/01/03-12/31/03	\$14,064.25	\$60.00	\$14,004.25	\$5,601.70
CARROLL	10/01/03-12/31/03	\$20,424.17	\$0.00	\$20,424.17	\$8,169.67
CLARK	10/01/03-12/31/03	\$78,904.10	\$2,065.55	\$76,838.55	\$30,735.42
DECATUR	10/01/03-12/31/03	\$29,697.68	\$10,305.09	\$19,392.59	\$7,757.04
FAYETTE	10/01/03-12/31/03	\$54,837.94	\$0.00	\$54,837.94	\$21,935.18
FLOYD	10/01/03-12/31/03	\$84,210.84	\$0.00	\$84,210.84	\$33,684.34
FOUNTAIN	10/01/03-12/31/03	\$15,088.68	\$3,138.45	\$11,950.23	\$4,780.09
FULTON	10/01/03-12/31/03	\$34,543.04	\$2,256.82	\$32,286.22	\$12,914.49
GREENE	10/01/03-12/31/03	\$59,371.61	\$0.00	\$59,371.61	\$23,748.64
HANCOCK	10/01/03-12/31/03	\$77,751.77	\$0.00	\$77,751.77	\$29,018.44
HENRY	10/01/03-12/31/03	\$79,185.08	\$0.00	\$79,185.08	\$31,674.03
JASPER	10/01/03-12/31/03	\$42,807.70	\$12,970.73	\$29,836.97	\$11,934.79
JAY	10/01/03-12/31/03	\$48,545.97	\$11,249.26	\$37,296.71	\$14,918.68

JENNINGS	10/01/03-12/31/03	\$21,227.19	\$1,945.70	\$19,281.49	\$7,712.60
KNOX	10/01/03-12/31/03	\$85,898.88	\$4,122.37	\$81,776.51	\$26,571.18
KOSCIUSKO	10/01/03-12/31/03	\$84,676.30	\$0.00	\$84,676.30	\$33,870.52
LAKE	10/01/03-12/31/03	\$754,313.83	\$0.00	\$754,313.83	\$301,725.53
LAPORTE	10/01/03-12/31/03	\$88,388.55	\$0.00	\$88,388.55	\$35,355.42
MADISON	10/01/03-12/31/03	\$365,184.24	\$14,890.43	\$350,293.81	\$140,117.52
*MARION	10/01/03-12/31/03	\$1,521,707.50	\$9,742.05	\$1,511,965.45	\$604,786.18
MIAMI	10/01/03-12/31/03	\$80,506.53	\$0.00	\$80,506.53	\$32,202.61
MONROE	10/01/03-12/31/03	\$178,325.00	\$4,686.94	\$173,638.06	\$69,455.22
MONTGOMERY	10/01/03-12/31/03	\$98,936.59	\$44,125.72	\$54,810.87	\$21,924.35
**NOBLE	10/01/03-12/31/03	\$42,797.24	\$0.00	\$42,797.24	\$17,118.90
OHIO	10/01/03-12/31/03	\$7,003.75	\$1,599.10	\$5,404.65	\$2,161.86
ORANGE	10/01/03-12/31/03	\$50,034.06	\$1,693.81	\$48,340.25	\$19,336.10
PARKE	10/01/03-12/31/03	\$14,179.45	\$0.00	\$14,179.45	\$5,671.78
PERRY	10/01/03-12/31/03	\$7,322.40	\$0.00	\$7,322.40	\$2,928.96
PULASKI	10/01/03-12/31/03	\$36,993.16	\$6,322.66	\$30,670.50	\$12,268.20
RUSH	10/01/03-12/31/03	\$26,924.28	\$9,328.11	\$17,596.17	\$7,038.47
SCOTT	10/01/03-12/31/03	\$81,200.14	\$20,787.24	\$60,412.90	\$24,165.16
SHELBY	10/01/03-12/31/03	\$46,452.71	\$5,249.16	\$41,203.55	\$16,481.42
SPENCER	10/01/03-12/31/03	\$19,937.25	\$0.00	\$19,937.25	\$7,974.90
STEUBEN	10/01/03-12/31/03	\$72,830.45	\$12,097.26	\$60,733.19	\$24,293.28
SULLIVAN	10/01/03-12/31/03	\$20,518.78	\$581.75	\$19,937.03	\$7,974.81
SWITZERLAND	10/01/03-12/31/03	\$30,632.10	\$2,439.05	\$28,193.05	\$11,277.22
VANDEBURGH	10/01/03-12/31/03	\$375,044.43	\$180.00	\$374,864.43	\$149,945.77
VERMILLION	10/01/03-12/31/03	\$12,328.95	\$3,204.29	\$9,124.66	\$3,649.86
VIGO	10/01/03-12/31/03	\$276,240.83	\$60,772.98	\$215,467.85	\$86,187.14
WARREN	10/01/03-12/31/03	\$7,602.00	\$444.00	\$7,158.00	\$2,863.20
WASHINGTON	10/01/03-12/31/03	\$56,332.60	\$6,768.71	\$49,563.89	\$19,825.56
WHITLEY	10/01/03-12/31/03	\$35,696.65	\$6,634.14	\$29,062.51	\$11,625.00
TOTAL		\$5,793,022.50	\$259,929.63	\$5,533,092.87	\$2,205,015.46

Staff attorney Neal Bowling noted that all Marion County claims, capital and noncapital, were reviewed and recommended by State Court Administration staff attorney Tom Carusillo.

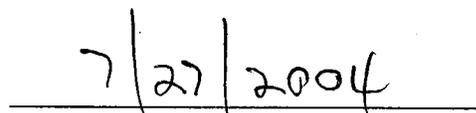
- The Commission then addressed the issue of how and/or whether to pay the reimbursement claims in full. Total claimed reimbursements from the second quarter of fiscal year 2003-2004, including the late amount in the Pruitt case, totaled \$2,485,070.40. It was noted that I.C. 33-19-7-5 mandates that two semiannual deposits of \$1.2 million each be distributed to the Public Defense Fund twice each year, on December 31 and June 30. It was further noted

that, nonetheless, the State Budget Agency has already made the June 30, 2004, distribution of \$1.2 million available to the Commission to spend on reimbursements, along with the \$2.3 million budget allotment that was made on January 1, 2004. Along with \$1.178 million left over from fiscal year 2002-2003, the Commission determined that it possessed sufficient funds to pay all reimbursement claims in full, and voted to do so.

11. The Commission then considered Perry County's proposed comprehensive plan. The Commission noted that the plan did not comport with Commission standards. Furthermore, Chairman Lefstein expressed his concern that the proposed plan was signed by the Perry Circuit Court judge, and that the plan seemed to be largely the creation of the judge. The proposed plan was tabled for further consideration. The Commission resolved that all future contact between the Commission and Perry County officials regarding the county's public defense program should be through the Perry County Public Defender Board.
12. Chairman Lefstein updated the Commission on the status of the *ad hoc* committee which was formed to discuss possible suggested revisions to Criminal Rule 24. It was noted that Justice Brent Dickson had been designated by Chief Justice Shepard to serve on the committee.
13. Chairman Lefstein noted that progress is being made toward establishing a standardized system through which to gather information about indigent defense systems in Indiana, and through which counties will be able to make requests for reimbursement of indigent defense expenditures.
14. The next meeting of the Commission was scheduled for July 7, 2004, at 3:00 p.m.



Norman Lefstein, Chairman



Date

¹ Paragraph 10 was amended by adding the following sentence:

Chairman Lefstein indicated that a letter will be sent to Chief Justice Shepard requesting approval for the payment of noncapital reimbursement claims as approved by the Commission, and disbursement will be made upon approval by the Chief Justice.

